

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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In re

RANDALL'S ISLAND FAMILY GOLF
CENTERS, INC.,

Debtor.
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Chapter 11

Case Nos. 00-41065

through 00-41188 (SMB)

(Jointly Administered)

OBJECTION OF CHINATRUST BANK (U.S.A) TO MOTION SEEKING
AUTHORIZATION AND APPROVAL OF THE BREAK-UP FEE AND THE
BIDDING PROCEDURES WITH RESPECT OT THE DEBTORS' MOTION
AUTHORIZING LIQUIDATION OF INVENTORY

Chinatrust Bank (U.S.A.) ("Chinatrust") submits the following objection to the break-up fee and the bidding procedures with respect to the Debtors' motion, dated December 20, 2000, authorizing the liquidation of inventory at thirty (30) different property locations.

1. Chinatrust is a lien creditor with rights on all personal property located at Peachtree Family Golf Center in Duluth, Georgia. Peachtree is one of the locations where the Debtor proposes to liquidate inventory.

2. This is the second time that the Debtors seek approval of a bulk sale of assets from numerous different bankruptcy proceedings that have not yet been substantively consolidated but have been administratively consolidated.

3. Any bidding procedures approved by the Court should protect the lien creditors' rights in the inventory to be sold. This includes the protection of lien creditors' credit bid rights under section 363(k). Because the bidding will involve a bulk sale of different assets located in approximately 30 different property sites in an equivalent number of bankruptcy proceedings, these credit bid rights would be undermined and thwarted. One way the Court can protect the credit bid rights of lien

creditors is to require in the bidding procedures that all bidders, including Schottenstein/Bernstein Capital Group ("SBCG") allocate their bulk bid among the various different properties.

4. The Court will recall that in the prior bulk sale of assets to Klak, the Debtors presented no evidence at all on the allocation of the bulk bid among the various properties included in the bid, even though the information was readily obtainable from the bidder, who has since supplied such information in discovery in connection with Chinatrust's adversary proceeding to determine the extent and validity of its liens. Especially in view of the fact that SBCG is seeking a "break-up" fee, the Court should require that SBCG and the Debtors produce evidence of the allocation of the bulk bid among all 30 properties before any bid is accepted and any sale is approved.

5. Chinatrust also objects to the potential award of a break-up fee to SBCG because it serves as a disincentive to competitive bidding. SBCG has done nothing to deserve this break-up fee, other than to be the preliminary highest bidder to date. There is no evidence that its efforts have attracted additional investors; indeed, the Debtors' moving papers show that it was the Debtors who solicited the other investors and SBCG just happened to be the highest bidder to date.

6. While the proposed break-up fee does appear to be within the range of what other courts have found to be reasonable, the Second Circuit has yet to formally rule that such fees are appropriate. The first court of appeals to address break-up fees, the Third Circuit, ruled in Calpine Corporation v. O'Brien Environmental Energy, Inc., 181 F.3d 527 (3rd Cir. 1999) ruled that break-up fees could only be authorized under section 503(b) and in that case were not allowable because they were not actually necessary to preserve the

value of the bankruptcy estate. In the case at bar, the Debtors have presented no arguments or evidence that SBCG's break-up fee is necessary to preserve the value of the bankruptcy estates at issue. In fact, if the value of the secured claims exceed the value of the inventory to be liquidated, the estates, which are rapidly approaching administrative insolvency, will receive nothing and the break-up fee will only cause harm to the secured creditors, since payment of the fee will leave lease to pay the secured creditors the full value of their section 506(a) lien claims on the inventory.

WHEREFORE, Chinatrust requests that this Court (1) revise the bidding procedures so as to protect the credit bid rights of lien creditors by requiring SBCG and all bidders to allocate their bulk bid and (2) deny the break-up fee sought by the Debtors and SBCG.

Dated: Edison, New Jersey
January 3, 2001

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